

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 LEHMAN BROTHERS HOLDINGS INC., CASE NO. 08-13555-scc

6 Debtor.

7 - - - - - x

8 United States Bankruptcy Court

9 One Bowling Green

10 New York, New York

11
12 July 6, 2017

13 9:02 AM

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21 B E F O R E:

22 HON. SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO - MATTHEW

Hearing re: Doc #55232 Motion of Lehman Brothers Holdings
Inc. for Entry of Order (A) Approving RMBS Settlement
Agreement, (B) Making Certain Required Findings Regarding
Decision of RMBS Trustees and LBHI Debtors to Enter into
RMBS Settlement Agreement, (C) Scheduling Estimation
Proceeding to Determine RMBS Claims and Approving Related
Procedures Regarding Conduct of Hearing, and (D) Granting
Related Relief (related document(s) 55154, 55096)

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23 J. GARY GWILLIAM, ESQ.
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25

1 P R O C E E D I N G S

2 THE COURT: Good morning. Please have a seat.
3 Good morning everyone.

4 (A chorus of good morning)

5 THE COURT: So we are still set up in trial mode
6 with the podium tilted, so probably be best if you speak
7 from counsel table.

8 MR. COSENZA: Sure.

9 THE COURT: All right? Mr. Cosenza, how are you?

10 MR. COSENZA: Good morning, Your Honor. Todd
11 Cosenza from Willkie Farr & Gallagher for the plan
12 administrator, Lehman Brothers Holdings Inc.

13 We are here before Your Honor on the plan
14 administrator's motion for entry of an order approving the
15 RMBS settlement agreement to resolve the RMBS claims the
16 trustee submitted through the protocol.

17 For background, Your Honor, I can give some
18 background if you want me to speed things up let me know, I
19 just want to -- we'll go through it in various situations.

20 THE COURT: I know that you know that I'm familiar
21 with the background.

22 MR. COSENZA: Yes.

23 THE COURT: But I think for the purposes of the
24 record --

25 MR. COSENZA: Sure.

1 THE COURT: -- it would be useful for you to give
2 some background.

3 MR. COSENZA: For background on November 30th,
4 2016 the plan administrator entered into an earlier version
5 of the settlement agreement now before the Court with
6 certain institutional investors, who are represented by
7 Mr. Madden, and presented that agreement to the trustees for
8 their consideration.

9 Thereafter the plan administrator, the trustees,
10 and the institutional ambassadors engaged in negotiations
11 regarding the terms of the proposed settlement.

12 On March 17th Lehman and the institutional
13 investors entered into a modified version of the settlement
14 agreement and presented the revised version of the agreement
15 to the trustees.

16 On March 22nd the plan administrator moved for an
17 entry of an order scheduling today's hearing and approving
18 notice proceedings with respect to this hearing.

19 The Court approved that motion on April 6th and
20 the plan administrator and trustees thereafter provided
21 extensive notice of today's hearing in accordance with the
22 scheduling order.

23 That notice included on April 27th the plan
24 administrator filing the 9019 motion before the Court
25 seeking approval of the settlement agreement.

1 A handful of objections were filed, Your Honor,
2 and I'll --

3 THE COURT: Yes.

4 MR. COSENZA: -- I'm going to deal with those --

5 THE COURT: Okay.

6 MR. COSENZA: -- and explain the status of those
7 at the end. But the objections for the most part have been
8 resolved, as detailed in our reply brief.

9 As part of our reply brief we have submitted
10 declarations dated June 30th, 2017 from Zachary Trump,
11 senior vice president in the residential mortgage group of
12 Lehman Brothers Holdings Inc., as well as for my colleague,
13 Paul Shalhoub.

14 Your Honor, I ask permission to hand those
15 declarations up to you and that they be admitted into
16 evidence.

17 THE COURT: Okay.

18 MR. COSENZA: And Exhibit 1 will be Mr. Trump's
19 declaration, Exhibit 2 will be Mr. Shalhoub's declaration.

20 THE COURT: All right. Is there any objection to
21 the admission into evidence of the Shalhoub affidavit and
22 the Trump affidavit?

23 All right. Very good.

24 (Debtor's Exhibit Nos. 1 and 2 were received)

25 MR. COSENZA: And I have copies for Mr. Kraut.

1 MR. KRAUT: Thank you.

2 MR. COSENZA: And, Your Honor, Mr. Trump is in the
3 court today if anyone wants to examine him on his
4 declaration.

5 THE COURT: Okay. Does anyone wish to examine
6 Mr. Trump with respect to his declaration?

7 All right. Very good.

8 MR. COSENZA: Now, Your Honor, if approved the
9 settlement will establish a process to resolve claims on the
10 remaining approximately 73,000 loans or 73,100 loans in
11 residential mortgage backed securitizations in which Lehman
12 was a seller. The trustee submitted the loans through the
13 protocol ordered by the Court in December 2014.

14 Under the agreement the parties had established a
15 process by which the plan administrator will request that
16 the Court estimate for purposes of allowance the claims for
17 the loans submitted through the protocol in an aggregate
18 amount of \$2.38 billion. And I know, Your Honor, that's
19 slightly different from the number that was in the
20 settlement agreement because various trusts have been
21 collapsed or have opted out of the settlement agreement.

22 THE COURT: Okay.

23 MR. COSENZA: So the number is slightly different
24 from the number that was in the various documents --

25 THE COURT: Okay.

1 MR. COSENZA: -- that we submitted. And I think
2 for purpose of the estimation proceeding we're now down to
3 230 trusts and this number is fluid because trusts are
4 collapsing and the like.

5 THE COURT: Okay.

6 MR. COSENZA: As you know the estimation
7 proceeding is scheduled for October 2017.

8 THE COURT: Yes.

9 MR. COSENZA: And Mr. Kraut will explain the
10 trustee's views in date after I complete my presentation.

11 THE COURT: Okay.

12 MR. COSENZA: For further background, Your Honor,
13 before the debtor's petition date -- and I'll give you
14 background, sort of the RMBS structures for the record and
15 what's sort of at issue in the estimation proceeding.

16 Certain of the debtors acquired mortgage loans and
17 securitized them. They established trusts through other
18 special purpose vehicles that acquired loans, held them, and
19 issued securities supported by the loans proceeds.

20 The agreement (indiscernible) the trust contained
21 representations and warranties that the quality and nature
22 of loans were at a certain level or that there was certain
23 documentation in the loan files.

24 The agreements gave the trustees a remedy if a
25 loan breached one of those representations or warranties.

1 And if the trustees claimed that one of those reps or
2 warranties were breached Lehman would have an opportunity to
3 cure the breach, repurchase the loan, or substitute a
4 performing loan for the breaching one. And that's just
5 based on the terms of the contracts.

6 In general terms to assert a claim the trustees
7 have to prove one, a breach; the breach adversely and
8 materially affected the value of the loan; and three, that
9 the trustee gave prompt notice of the breach to Lehman.

10 On or around the bar date, September 22, 2009, the
11 trustees filed proofs of claims asserting \$37 billion in
12 repurchased loans.

13 In 2010 the plan administrator asked the trustees
14 for evidentiary support for the breaches asserted.

15 Having not received satisfactory support the plan
16 administrator filed several objections to proofs of claims
17 on that basis and for other reasons.

18 In 2011 certain of the trustees' claims were
19 dismissed, but most of them remained.

20 For the next three years no progress was made on
21 resolving these claims.

22 In January 2012 after the plan was approved the
23 debtors moved to estimate the trustees' claims to establish
24 a reserve. The debtor's estimated amount of claims was
25 valued between at that time 1.1 and 2.4 billion and proposed

1 a reserve of 2.4 billion. The trustees argued for reserve
2 of at least 15.3 billion, the parties agreed on a reserve of
3 5 billion which the Court approved.

4 Then in July 2012 the debtors and trustees tried
5 to mediate the claims; however, those efforts, as Your Honor
6 is aware, failed.

7 In August 2014 the trustees moved to increase the
8 RMBS reserve and the plan administrator cross-moved to
9 establish a protocol to determine the claims on a loan by
10 loan level.

11 In December 2014 Your Honor heard arguments and
12 expert testimony at a hearing on those motions. The plan
13 administrator argued for a loan by loan level review as
14 required by the trust's governing agreements. The Court
15 agreed with our path and instructed the parties to negotiate
16 the terms of a loan by loan level review process.

17 Following significant negotiations between the
18 parties the Court then entered an order approving the plan
19 administrator's five-step protocol to reconcile and
20 determine the RMBS claims on a loan by loan basis.

21 THE COURT: I just want to pause here to make a
22 note, because I think it's significant with respect to the
23 analysis that's required of me to approve the settlement
24 under 9019.

25 The history that you've just detailed,

1 particularly the part of the story that picks up with the
2 cross- motions around the increase of the reserve and the
3 establishment of the protocol and also the proceedings that
4 were had with respect to the use of sampling are part of the
5 record in this matter and I think are significant in terms
6 of establishing my familiarity with the underlying dispute,
7 the complexity of the underlying dispute, the length of time
8 that it would take to resolve the loans on a loan by loan
9 basis, and also the challenges that would be associated with
10 coming up with a procedure that was something less than a
11 loan by loan review.

12 It has always been abundantly clear that purely in
13 terms of math it would be a virtual impossibility for one
14 person, no matter how hard he or she works, to resolve all
15 of these loans on a loan by loan basis.

16 Therefore the challenge that was always going to
17 exist was going to be in a absence of a settlement how does
18 this get done? And I think that that's an important piece
19 of background as it informs my approach to reviewing the
20 reasonableness of the settlement.

21 MR. COSENZA: The plan administrator agrees with
22 all of your points, Your Honor.

23 I'm going to delve back into the history of what
24 happened following --

25 THE COURT: Sure.

1 MR. COSENZA: -- the entry of the protocol order.

2 During the -- and what led us to the settlement.

3 During the protocol the plan administrator and the
4 institutional ambassadors engaged in negotiations to try to
5 settlement the claims.

6 From January 2015 through October 2015 we engaged
7 in mediation with Mr. Madden before -- and his firm before
8 David Jeronimus. That resulted in agreement which would
9 have allowed all claims in the amount of \$2.44 billion. The
10 \$2.44 billion is roughly the same amount that's been
11 allocated here. There was some amount that had been
12 allocated to the transfer of trusts that have now been
13 disallowed, as well as, as I mentioned before, a number of
14 trusts have fallen out of the process.

15 The parties agreed that the -- have agreed that
16 the October 26, 2015 agreement will be admitted into
17 evidence during the estimation proceeding.

18 The agreement was presented to the trustees who
19 engaged multiple experts to assist in evaluating that
20 settlement proposal; however, the trustees told the plan
21 administrator that an insufficient number of trusts would
22 accept a settlement so the plan administrator withdraw the
23 settlement agreement.

24 After withdrawal of the first proposed settlement
25 the plan administrator and institutional ambassadors

1 committed themselves to resolving the claims as quickly as
2 efficiently as possible and we went back to work with the
3 institutional investors.

4 And I want to note, as Your Honor mentioned, the
5 protocol was critical to moving this process along because
6 it facilitated the resolution of these claims, because a
7 fixed universe of loan files are at issue and collected all
8 the evidence and arguments according to claims at issue. So
9 I think we made both sides, you know, appreciate what was
10 actually at issue in the case and it provides all the data
11 necessary for the Court to estimate the claims at the
12 hearing in October.

13 As I mentioned the parties entered into another
14 RMBS settlement agreement on November 30th, 2016.

15 After further negotiations, as I mentioned
16 earlier, the plan administrator and institutional investors
17 entered into a modified form of the agreement dated
18 March 17, 2017, which is the agreement that's -- you know,
19 that facilitates this 9019 process.

20 Your Honor, getting now more into the merits.

21 The RMBS settlement agreement according to -- at
22 least to the plan administrator is fair and equitable, it
23 provides an estimation process that allows the plan
24 administrator to request allowance of the trustees' claims
25 at a level the institutional investors will accept. The

1 institutional investors support all aspects of the
2 settlement. And as stated that the trustee findings and bar
3 order are "appropriate" and should be entered by the Court,
4 and that's from their statement dated June 29, 2017
5 paragraphs 1 and 2.

6 The trustees have also concluded, and Mr. Kraut
7 will present that, that the RMBS settlement agreement
8 provides a reasonable process to resolve the claims.

9 Under the agreements the plan administrator will
10 seek, as I mentioned before, estimation for purposes of
11 allowance of the covered loan claims through an estimation
12 proceeding under Section 502(c).

13 The plan administrator has agreed to seek
14 estimation in the amount of 2.38 billion as an allowed Class
15 VII general unsecured claim.

16 If the Court -- and this is -- something I'll go
17 over later on -- this is a somewhat unusual process -- but
18 if the Court estimates claims at two billion or more all
19 parties have waived their rights to appeal. If the Court
20 estimates the claim at less than two billion only the
21 trustee may appeal. And if the estimate is between 2 and
22 2.38 the plan administrator has agreed to allow a claim at
23 \$2.38 billion.

24 The estimation proceedings will follow the
25 comprehensive procedures that are set forth in Exhibit G to

1 the settlement agreement.

2 THE COURT: And if the number is higher then the
3 plan administrator will not appeal.

4 MR. COSENZA: That is correct, Your Honor.

5 The plan administrator and the trustees
6 extensively negotiated the procedures outlined in Exhibit G
7 to the settlement agreement. It includes an expert
8 discovery schedule, pretrial briefing, and other
9 requirements regarding identification of witnesses and
10 exhibits.

11 Your Honor, each participating trust will get its
12 allocable share of the net allowed claim determined by the
13 Court. These percentages are detailed in Exhibit H to the
14 settlement agreement.

15 And the settlement agreement provides a release of
16 all claims that were or could have been asserted in the
17 covered loan claims filed or asserted in the bankruptcy
18 proceeding or in the protocol except to the limited extent
19 set forth in Article 4 of the agreement.

20 As to the acceptance of the agreement, as I
21 mentioned, it was presented to the trustees on March 17,
22 2017. The trustees had until June 1 to elect to participate
23 in the settlement. The institutional investors expressed to
24 the trustees their support for the settlement process and
25 requested that each trustee participate. The trustees were

1 able to retain experts and solicit input from investors.

2 The accepting trustees have accepted the
3 settlement on behalf of the vast majority of the trusts at
4 issue, and based on my count 230 trusts remain, and as I
5 mentioned before that number is in flux to some degree, but
6 roughly 230 trusts are subject to the estimation proceeding
7 in October.

8 On April 27 the plan administrator filed a motion
9 seeking approval of the settlement agreement, and as I
10 mentioned, we'll get to the handful of objectors later.

11 Your Honor, moving now to some of the analysis of
12 the various factors and standards for whether or not a
13 settlement is fair and equitable and then we'll move on to
14 the Iridium factors --

15 THE COURT: Okay.

16 MR. COSENZA: -- and go through them in detail.

17 THE COURT: Thank you.

18 MR. COSENZA: The plan administrator believes that
19 the RMBS settlement satisfies the Second Circuit standard
20 for approval of a compromise under Bankruptcy Rule 9019.

21 Rule 9019(a) empowers the Court to approve a
22 settlement agreement entered into by a debtor if it (1), is
23 supported by adequate consideration; (2), is fair and
24 equitable, and (3), is in the best interest of the estate.

25 And we cited various cases in our brief. I'm not

1 going go through the various case cites.

2 But in the circuit the court must determine
3 whether the proposed settlement falls below the lowest point
4 in the range of reasonableness. And to decide whether a
5 settlement falls within the range of reasonableness courts
6 consider the seven factors set forth in the Second Circuit's
7 decision in Iridium and they're also often called the
8 Iridium factors, which Your Honor is obviously quite
9 familiar with.

10 Going to the first Iridium factor, one, the
11 balance between the litigation's possibility of success and
12 the settlements of future benefits the plan administrator
13 believes that this strongly weighs in favor of approval.

14 As I mentioned a few minutes ago this settlement
15 is very unusual. A typical situation starts with a dispute
16 between a creditor and a debtor or a trustee concerning the
17 amount of the creditor's claim. When the economic
18 stakeholder in the claim reaches an agreement with the
19 trustee concerning the amount of the claim or the claim can
20 be settled pursuant to a dollar amount under Bankruptcy Rule
21 9019.

22 In this case the trustee, or in this case the plan
23 administrator, negotiated a settlement with meaningful
24 economic stakeholders back in October 2015. For a number of
25 reasons that settlement was not consummated.

1 In an effort to reach the same result for the
2 estate and these economic stakeholders the plan
3 administrator has agreed the Court to conduct an estimation
4 proceeding to allow these claims at the same level
5 negotiated with the stakeholders.

6 Ultimately the plan administrator determined that
7 the most expedient way to get these claims resolved at a
8 fair level would be to submit them to estimation by the
9 Court under the authority conferred by bankruptcy court
10 pursuant to Section 502(c) of the Bankruptcy Code. The
11 institutional investors have agreed, Your Honor.

12 An estimation process necessarily requires the
13 Court to hear each sides' view as to what the claim should
14 be allowed at, and that'll be part of the estimation
15 proceeding in October.

16 So it's going to be again an unusual situation
17 because the Court will hear the plan administrator's case,
18 which will advocate potential outcomes much lower than the
19 \$2.3 billion, but in a proceeding where the plan
20 administrator is asking the claim to be allowed at
21 \$2.38 billion because we believe it's in the best interest
22 of everyone to move forward with the settlement at that
23 level. The trustees will be advocating for a much higher
24 number.

25 In the end both sides will rely on the Court's

1 determination for the appropriate level of allowance.

2 Nevertheless even in this atypical situation the
3 first factor, balancing likelihood of success and the
4 settlement's future benefits, is easily satisfied.

5 The RMBS settlement agreement is the product of a
6 hard fought arms length negotiation between sophisticated
7 parties, the plan administrator, the institutional
8 investors, and the trustees. Each party concluded that the
9 determination of the net allowed claim as the agreement
10 provides is reasonable and appropriate.

11 They did so based on the assessment of the
12 possibility of success of the claim litigation and the
13 benefits of the settlement.

14 The terms reflect the plan administrator's
15 assessment of the risk, time, and expense of completing the
16 protocol, which would involve litigation and appeals in the
17 final step, and as Your Honor indicated before, it would
18 take quite some time and there's a lot of uncertainty as to
19 -- you know, as I'll mention later -- to the estate in terms
20 of its dissolving and paying out its remaining money to its
21 creditors. And, you know, obviously there's a benefit to
22 all parties in the near term of a certain resolution of the
23 claims.

24 While the plan administrator believes that
25 completing the protocol will result in a net allowed claim

1 significantly under 2.38 billion, the plan administrator
2 again believes that amount represents a fair resolution
3 given the wide range of potential outcomes and the time and
4 expense saved by the process.

5 If Your Honor does not approve the settlement the
6 parties would need to complete steps three and four of the
7 protocol, which are quite -- which would take quite some
8 time before we even get to step five and the difficulties
9 with trying to adjudicate potentially thousands of claim.

10 Given the divergence of the parties' views --

11 THE COURT: Quite some time being counted not in
12 weeks, not in months, but most likely in years.

13 MR. COSENZA: That is correct, Your Honor.

14 Given the divergence of the parties' views and the
15 validity of the claims it is very likely the Court would
16 need to determine thousands of claims. That would involve
17 again a loan by loan level litigation, that again would take
18 many years.

19 The settlement and its intended Exhibit G dispense
20 with the uncertainty by prescribing detailed procedures for
21 the estimation hearing.

22 While the parties may differ as to the likely
23 outcome of the litigation process they agreed that the
24 proposed settlement will provide substantial benefits to the
25 plan administrator, participating trusts, and other

1 stakeholders.

2 Iridium factor number 2, Your Honor, the
3 likelihood of complex and protracted litigation. This again
4 weighs in favor of approval. I outlined a bunch of those
5 issues earlier. But litigating an alleged breach of rep and
6 warranty cases in the RMBS context is quite difficult,
7 complex as we've demonstrated during the December 2014
8 hearing. Each loan file basically tells a different story,
9 and each trust theoretically has different governing
10 agreements and different language.

11 So this is a -- with that litigation that might
12 take a lot of time, it would take --

13 THE COURT: And for that reason even if this
14 matter had to go down the litigation path it is certainly
15 possible, indeed likely, and I think contemplated certainly
16 by me and I think by the other parties that at a certain
17 point it would have been necessary to negotiate exactly the
18 type of trial procedure that has now been achieved in the
19 settlement because of the impossibility of -- virtual
20 impossibility of dealing with the loans on a loan by loan
21 basis something would have had been done -- would have had
22 to have been done whether it's called sampling or something
23 else.

24 What the parties have achieved by this settlement,
25 and I think that in this particular case sampling as it's

1 been applied in other contexts poses particular hurdles.
2 Not necessarily insurmountable hurdles, but they would have
3 been challenging and the parties would have been undoubtedly
4 loggerheads over a sampling methodology.

5 So what this settlement achieves among many things
6 is that the parties have agreed on a process that's not
7 called sampling, but it's a process that is well short of a
8 claim by claim review, and I think that that's worth
9 emphasizing as we move forward today.

10 MR. COSENZA: We agree with that, Your Honor. And
11 as you mentioned, the estimation proceeding avoids the
12 protracted litigation and sort of the various permutations
13 that could have resulted through litigating each claim and
14 with attempts to resolve the claims at approximately three
15 weeks with hearings before Your Honor.

16 THE COURT: But your estimates are always wrong,
17 so it will be longer than three weeks I'm quite sure.

18 MR. COSENZA: We will try.

19 Further promoting efficiency as of now the plan
20 administrator has waived its appeal rights, as I mentioned
21 earlier, and the trustees will waive their rights provided
22 that the net allowed claim is two billion or higher.

23 Although the plan administrator again believes
24 that the Court could estimate the claims at well below
25 \$2.38 billion again we've agreed to seek this amount for

1 finality and favorable -- get a reasonable result to all
2 certificate holders.

3 And I'm moving on to Iridium factor number 3,
4 paramount interest of creditors. We also believe this
5 weighs in favor of approval.

6 The proposed agreement is highly beneficial to the
7 Lehman estate and their stakeholders because it resolves one
8 of the largest groups of unsecured claims outstanding
9 against Lehman. This provides the much needed
10 predictability regarding the plan administrator's future
11 distributions. And materially accelerates resolution of
12 this massive and factually intensive claim, thus avoiding
13 the need to set aside reserves for potential payment of
14 covered loans, which has delayed and reduced recoveries for
15 other creditors.

16 Again, this allows for the prompt determination of
17 the covered loan claims in a fair and reasonable manner.

18 Lastly a loan by loan level litigation of the
19 claims would significantly delay the winding down of the
20 estate and burden the estate with substantial legal expenses
21 jeopardizing creditors' interests.

22 For all these reasons the settlement is in the
23 paramount interest of creditors.

24 Moving on to Iridium factor number 4, whether
25 other parties in interest support the settlement. We also

1 believe this strongly weighs in favor of approval.

2 The trustee is the only other parties besides the
3 plan administrator who had standing to litigate this action,
4 enter this settlement agreement, and support the estimation
5 process it established.

6 The agreement is further supported by 14
7 institutional investors who are holders and/or authorized
8 investment managers for holders of over \$6 billion in
9 certificates in the trust regarding the covered loan claims.

10 This factor does weigh in favor of approval.

11 Moving on to Iridium factor number 5, the nature
12 and breadth of releases to be obtained by officers and
13 directors. We again strongly believe this weighs in favor
14 of approval.

15 The settlement agreement has a broad release
16 provision, it releases the LBHI debtors, non-debtor
17 affiliates, and LBI debtor's officers and directors of any
18 and other claims that were asserted or could have been
19 asserted by the trust related to the covered loan claims,
20 except to the limited extent set forth in Article 4 of the
21 agreement, and the release provides certainty and finality
22 to the debtor's estate.

23 Iridium factor number 6, the consistency and
24 experience of counsel supporting and experience and
25 knowledge of the bankruptcy court judge reviewing the

1 settlement. Respectfully we believe that weighs in favor of
2 settlement.

3 The parties here -- the trustees and institutional
4 investors, I won't speak for the plan administrator, are
5 represented by sophisticated counsel in the RMBS matters,
6 it's up for Your Honor to decide whether the plan
7 administrator is represented by sophisticated counsel.

8 The trustee has also retained experts to analyze
9 the benefits and burdens of the settlement which they will
10 discuss later.

11 And obviously, Your Honor, we believe that based
12 on your experience in handling this case over the last few
13 years and your general commercial experience that you
14 possess the experience and knowledge to review the
15 settlement, you know, and also the ability to oversee the
16 estimation proceeding.

17 Iridium factor number 7, the extent to which a
18 settlement is a part of an arms length bargaining.

19 I've covered this in some detail earlier, but the
20 parties heavily negotiated this at arms length and in good
21 faith and put in several months negotiating the settlement
22 agreement.

23 All the parties to the agreement who hold seemly
24 different views of the value of their claims again were
25 represented by experienced counsel, and there was much

1 negotiation and shifting of the settlement agreement.

2 Your Honor, I've gone through the Iridium factors,
3 I'm now going to transition over to the status of the
4 various objections --

5 THE COURT: Sure.

6 MR. COSENZA: -- that were filed by the court.

7 THE COURT: Thank you.

8 MR. COSENZA: And as you're aware there were five
9 objections --

10 THE COURT: Yes.

11 MR. COSENZA: -- that have been filed. We believe
12 that almost all of them have been resolved or are meritless.
13 There's -- and I'll list them all.

14 There was the preliminary investor objection.

15 THE COURT: Yes.

16 MR. COSENZA: Two, the Royal Park objection.

17 Three, the BNC claimants objection. Four, the Five Points
18 objections. And five, the iFreedom objection.

19 THE COURT: Yes.

20 MR. COSENZA: As to the investor objection they
21 are represented by the Kasowitz firm and they filed a
22 preliminary objection claiming that it needed discovery to
23 determine the propriety of the findings in the settlement.

24 We believe that that objection was without merit,
25 nevertheless we engaged in discussions with the trustees and

1 the Kasowitz firm to alleviate their concerns and to avoid
2 the potential for distraction, cost, and delay related to
3 their requested discovery.

4 The settlement between the parties is set out in
5 the letter drafted by the Kasowitz firm, which was
6 negotiated at arms length by the parties and filed with the
7 court.

8 THE COURT: It's entered at docket 55650?

9 MR. COSENZA: That's correct, Your Honor.

10 THE COURT: Dated June 27th.

11 MR. COSENZA: That's correct.

12 The Royal Park --

13 THE COURT: Before you move on is there someone
14 from the Kasowitz firm here?

15 MR. FLIMAN: Yes, Your Honor.

16 THE COURT: How are you, Mr. Fliman?

17 MR. FLIMAN: Good morning, Your Honor.

18 THE COURT: I have a question for you. Did you
19 file a Rule 9019 -- a 2019 statement?

20 MR. FLIMAN: We have not filed one, Your Honor.
21 We most certainly can.

22 THE COURT: Okay. Yes, you certainly will.

23 MR. FLIMAN: We will.

24 THE COURT: All right?

25 MR. FLIMAN: Thank you.

1 THE COURT: Thank you. When you file it please
2 make sure that a copy is send to my chambers, all right?

3 MR. FLIMAN: That's fine.

4 THE COURT: Thank you. Okay. Next?

5 MR. COSENZA: Moving on to the Royal Park
6 objection. Royal Park is the named plaintiff and class
7 representative in a class action against Wells Fargo --

8 THE COURT: Yes.

9 MR. COSENZA: -- that's been pending in The
10 Southern District.

11 Royal Park's concern with the proposed settlement
12 is whether releases and findings made pursuant to the motion
13 would somehow impact their rights in a district court case
14 versus Wells Fargo.

15 THE COURT: Yes.

16 MR. COSENZA: The parties have negotiated these
17 issues.

18 In exchange for withdrawing the objection they've
19 agreed to language in the proposed order that makes clear
20 that the agreement does not release the claims that Royal
21 Park is pursuing. So I think we've resolved that objection,
22 Your Honor.

23 THE COURT: Okay. Mr. Adkin (ph), how are you?

24 MR. ADKIN: Good, Your Honor.

25 THE COURT: Does Mr. Cosenza have it right?

1 MR. ADKIN: I believe so, except that -- sorry.

2 Sorry, didn't mean to interrupt. Just one thing, Your
3 Honor.

4 THE COURT: Sure.

5 MR. ADKIN: There were two objections filed.

6 THE COURT: Yes.

7 MR. ADKIN: One by my firm and the Robbins Geller
8 firm --

9 THE COURT: Yes.

10 MR. ADKIN: -- with respect to the Wells Fargo --

11 THE COURT: Uh-huh.

12 MR. ADKIN: -- litigation, another by the Robbins
13 Geller firm with respect to the U.S. Bank litigation.

14 THE COURT: Okay.

15 MR. ADKIN: What is now paragraph J of the revised
16 proposed order is the language that was negotiated to
17 resolve the objections.

18 We did file last night a withdrawal of our limited
19 objection based upon our review of the language --

20 THE COURT: Okay.

21 MR. ADKIN: -- which is what was negotiated.

22 I believe Mr. Rothman of the Robbins Geller firm
23 is on the phone. They have not yet filed a formal
24 withdrawal of the objection, but I believe that -- assuming
25 he's there --

1 THE COURT: He is.

2 MR. ADKIN: -- that he can confirm that --

3 THE COURT: Okay.

4 MR. ADKIN: -- the objection is withdrawn as well.

5 THE COURT: Very good.

6 Mr. Rothman, are you there, sir?

7 MR. ROTHMAN: I am, Your Honor.

8 THE COURT: Can you confirm that you're going to
9 withdraw your objection?

10 MR. ROTHMAN: That's correct, Your Honor. We have
11 no objection to the revised proposed order as reflected in
12 docket number 55699.

13 THE COURT: Very good. Thank you.

14 MR. ADKIN: Thank you, Your Honor.

15 MR. ROTHMAN: Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Adkin.

17 Okay. Mr. Cosenza?

18 MR. COSENZA: Moving on, Your Honor, to the
19 objection that was filed by Five Points LLC.

20 Five Points LLC is the beneficial owner of
21 certificates. Had objected to the motion to the extent that
22 the agreement modifies the payment protocol in the governing
23 agreements, but that is not the intent of Section 3.06 of to
24 settlement agreement. And the parties confirmed to Five
25 Points that the provisions of the governing agreements,

1 including the provisions regarding the trust proceeds,
2 control over any conflict between the settlement agreement
3 and governing agreements.

4 And Five Points has informed the parties that all
5 of its objections are resolved. And it has, my
6 understanding, yesterday evening withdrawn its objection.

7 THE COURT: Okay.

8 MR. COSENZA: Okay. Moving on to the BNC
9 claimant's objection.

10 THE COURT: Yes.

11 MR. COSENZA: That objection has not been
12 resolved.

13 While we -- the plan administrator believe that is
14 the BNC claimant's objection is meritless and should be
15 overruled. The objection was filed by individuals alleging
16 to be former employees of BNC mortgage who filed proofs of
17 claim asserting \$4.5 million against the BNC estate. The
18 objection is based on the silence of the settlement
19 agreement as to what portion of the net allowed claim, if
20 any, will be allocated to which LBHI debtor, including BNC.

21 We believe that this objection should be overruled
22 for several reasons.

23 First, the Court only has to consider whether a
24 settlement agreement should be approved. The agreement does
25 not determine any liability of any debtor besides LBHI.

1 Instead the agreement establishes a process for the Court to
2 estimate and determine the allowed amount of the covered
3 loan claims.

4 Second, the covered loan claims were asserted only
5 against LBHI, not against any other LBHI debtor. Any
6 liability on the part of BNC does not arise from the covered
7 loan claims and is not the subject of this hearing.

8 Third, the ultimate settlement consideration that
9 will be determined by this Court will be an allowed Class
10 VII general unsecured claim against LBHI, not against any
11 other LBHI debtor. This again will be done through the
12 estimation proceeding. Nothing is being determined at this
13 hearing or in the settlement agreement that impacts BNC in
14 any way.

15 So we respectfully request that the BNC objection
16 be overruled.

17 And the last --

18 THE COURT: Well it appears that I have
19 Mr. Gwilliam on the phone. Are you there, Mr. Gwilliam?

20 MR. GWILLIAM: Yes, Your Honor, I'm here. Thank
21 you.

22 THE COURT: Well, Mr. Gwilliam, you had been
23 invited to come and participate in the hearing but it
24 appears that you determined just to appear on the phone. By
25 that should I assume that you have nothing further that you

1 want to argue and that I should just resolve this objection
2 based on what you put in your papers?

3 MR. GWILLIAM: Well our objection does speak for
4 itself. I do think that if you allow me to that we do feel
5 that the BNC debtor claims are impacted by this. As the
6 Court knows from our case that that's been --

7 THE COURT: Mr. Gwilliam, I think it was
8 communicated to you that if you wished to make an argument
9 in this courtroom, which is quite full, that you needed to
10 be here in person. Those are my rules and I'm not inclined
11 to depart from them today. So I have --

12 MR. GWILLIAM: I was informed of that yesterday
13 morning.

14 THE COURT: All right. Well I -- those are my
15 rules, I have read your objection, and I've listened to
16 Mr. Cosenza's argument and read the submission by the plan
17 administrator, and for all of the reasons that the plan
18 administrator has set forth your objection will be overruled
19 in the order that will be entered.

20 Go ahead, Mr. Cosenza.

21 MR. GWILLIAM: All right.

22 MR. COSENZA: Thank you, Your Honor.

23 The last objection is the iFreedom objection. I
24 think this one is in a state of flux, Your Honor, because we
25 had thought that we had alleviated iFreedom's concern, but

1 let me go through the background on this and see if there's
2 still an objection that's in place.

3 THE COURT: Okay. Well just to expedite things
4 since I do have any eye on the clock, I have read the
5 iFreedom objection, I have read in the proposed order the
6 language that has been asserted which -- in paragraph K on
7 page 13 which as far as I can tell tries to make it crystal
8 clear that the entry of this order is totally without
9 prejudice to any rights that iFreedom may have with respect
10 to subsequent proceedings that may or may not occur.

11 So I frankly am at a loss to understand why this
12 wouldn't resolve the objection. Hello, Ms. Adler.

13 MR. ADLER: Good morning, Your Honor. May I speak
14 to the question that you just posed?

15 THE COURT: Sure.

16 MS. ADLER: Okay. There are -- the objection was
17 about two things. One you've just addressed, which was we
18 wanted the record to be clear that no rights were being
19 objected.

20 But the second piece of it is that LBHI by serving
21 copies of the RMBS motion papers on iFreedom purported to
22 give iFreedom "notice," notice in quotes, of this
23 proceeding.

24 What we wanted to make clear was that this
25 proceeding is not a proceeding in which iFreedom is being

1 afforded an opportunity to come in and defend against claims
2 that it may have breached loans that are the subject of the
3 RMBS motion and the estimation proceeding.

4 THE COURT: Well I think that that goes without
5 saying, because this is a 9019 motion that is procedural, it
6 is not settling any -- it is not dealing with any of the
7 underlying claims. There is no opportunity, there is no
8 piece of this that would conceivably allow or enable you to
9 engage in that exercise. So it's a bit of ships passing in
10 the night.

11 I hear your concern and that's why this language I
12 think fully protects you, because it's impossible to imagine
13 a way in which you could do what you've just outlined here
14 today or in connection with the settlement.

15 When we get to the estimation proceeding itself
16 you of course are free to raise -- file whatever you believe
17 you can file. I don't even believe it would be ripe at that
18 moment, but I understand where you're coming from.

19 So my intent, and I think the plan administrator's
20 intent, speaking for the plan administrator, who can speak
21 for himself, is to assure you that nothing that's happening
22 here today or in the estimation proceeding will in any way
23 change, diminish, expand, affect your rights in any way. It
24 can't be used against you. It can't be used. It can't
25 change anything. So --

1 MS. ADLER: Subject to the Court's assurance, Your
2 Honor --

3 THE COURT: You had it.

4 MS. ADLER: -- that's acceptable. Then we can
5 withdraw the objection. The language that was in there left
6 issues at least in our view unclear. But subject to the
7 assurances --

8 THE COURT: Well the language --

9 MS. ADLER: -- on the record --

10 THE COURT: All right.

11 MS. ADLER: -- we can live with that.

12 THE COURT: Well I will so order the record in
13 that regard because I'd like to make a few changes to the
14 order as possible. But you have my assurance on the record.
15 And I think the language does it, I think that's what it's
16 intended to do, but I understand that you wanted to be 101
17 percent sure.

18 MS. ADLER: Thank you, Your Honor.

19 THE COURT: All right?

20 MS. ADLER: Appreciate that.

21 THE COURT: Thank you.

22 MS. ADLER: Thank you.

23 THE COURT: Okay. Mr. Cosenza?

24 MR. COSENZA: Yeah. With that, Your Honor, I just
25 have one minute and I will complete my presentation.

1 THE COURT: Okay.

2 MR. COSENZA: Just one administrative issue I
3 wanted to flag.

4 As the Court is aware the settlement agreement
5 requires that the trustee findings be submitted in proposed
6 findings and conclusions to the district court for approval.

7 And in conclusion, Your Honor, for all the reasons
8 I've just described and more fully set forth in our briefs
9 and Mr. Trump's declaration, the plan administrator
10 respectfully requests that the Court enter the proposed
11 order approving the RMBS settlement agreement, and we filed
12 a revised proposed order yesterday containing detailed
13 findings. And if there are any issues with those, you know,
14 please let us know.

15 THE COURT: Okay.

16 MR. COSENZA: Thank you for your time --

17 THE COURT: All right.

18 MR. COSENZA: -- and making yourself available --

19 THE COURT: Sure.

20 MR. COSENZA: -- for this, Your Honor.

21 THE COURT: Okay.

22 MR. COSENZA: Thank you.

23 THE COURT: Good morning.

24 MR. KRAUT: Good morning, Your Honor. Michael
25 Kraut of Morgan Lewis, we represent U.S. Bank in this

1 matter. I'll be speaking today on behalf of all the
2 trustees. I'm focused on the trustee findings and the bar
3 order, which are referenced in paragraphs 1 through 4 and
4 paragraph G of the proposed order.

5 In the submission we made last Thursday we refer
6 to those together, the trustee findings and the bar order as
7 the trustee relief. So if I use that term --

8 THE COURT: Sure.

9 MR. KRAUT: -- that's what I mean by that.

10 And when we prepared that submission last
11 Thursday, Your Honor, we didn't hold back anything for
12 today's argument. And so in addition to the 44-page brief
13 that we submitted we filed 7 affidavits and declarations.

14 THE COURT: Yes.

15 MR. KRAUT: A declaration from the trustee's
16 bankruptcy expert, Judge Judith Fitzgerald. In that
17 declaration she described her credentials, how she analyzed
18 the settlement agreement, with ultimately recommending that
19 the trustees accept it for the accepting trusts, and her
20 declaration attaches that report.

21 THE COURT: Yes.

22 MR. KRAUT: We submitted affidavits from trust
23 officers from the four trustees --

24 THE COURT: Yes.

25 MR. KRAUT: -- explaining their process for

1 evaluating the settlement and how they decided to accept it
2 in reliance on Judge Fitzgerald's recommendation.

3 And two other affidavits, Your Honor. An
4 affidavit from Edmon Esses (ph), the trustee's financial
5 expert, Duff & Phelps, explaining in part how Duff & Phelps
6 assisted the trustees and Judge Fitzgerald in reviewing the
7 settlement offer.

8 And last an affidavit from Jose Feraga (ph) of the
9 Garden City Group, which the trustee retained to comply with
10 Court's notice order and to generally facilitate the
11 trustees' communications with investors.

12 We have copies of those. You have them?

13 THE COURT: I have them all. Thank you.

14 MR. KRAUT: Fair enough. Okay. Well as --

15 THE COURT: As a formal matter I think you want to
16 -- you're going to want to enter them into the record.

17 MR. KRAUT: That's right. So I have them here if
18 you want to hand them up to her. We is do this now. I
19 don't have them stamped because I didn't know what number
20 we'd be picking up. So --

21 THE COURT: That's okay.

22 MR. KRAUT: -- should we do this afterwards or
23 hand them up now?

24 THE COURT: You can do it afterwards.

25 MR. KRAUT: Okay. We'll provide copies.

1 THE COURT: I think we have just plain old one and
2 two, so we can do three through what've you have.

3 MR. KRAUT: We'll have copies delivered to
4 chambers today --

5 THE COURT: Okay.

6 MR. KRAUT: -- starting with Exhibit 3.

7 THE COURT: Very good.

8 MR. KRAUT: Well as Mr. Cosenza explained we're
9 pleased to report that all objections that relate in any way
10 to the trustee relief have been resolved.

11 We think the submission that we made last Thursday
12 is more than sufficient basis for the Court to --

13 THE COURT: Well it's not only sufficient, it's
14 impressively robust, I have to say.

15 First and foremost, I have read most of the
16 submissions, but I have read cover to cover Judge
17 Fitzgerald's report, which was particularly striking to me
18 inasmuch as it revealed a true informed and also intuitive I
19 think understanding of what we all have been through
20 together in the last couple of years and what would have
21 been facing the Court and the parties had this not come
22 together.

23 And on that note I think it's worth noting that
24 the trustees and their counsel deserve a lot of credit for
25 working together in this process under significant

1 circumstances.

2 There was certainly not peace in the valley at all
3 times. There were many times where there was something
4 other than peace in the valley, and when certainly I felt
5 discouraged that there ever would be this kind of an
6 agreement.

7 So I think it's a great credit to the
8 determination of the trustees and their counsel and their
9 experts to have gotten through this, even though they were
10 stymied at many turns of this litigation.

11 This is really difficult stuff, and I think that
12 everybody is well aware of what it looks like for litigation
13 to not settle. If you don't take a look around.

14 So I really am grateful and I think this
15 represents the best of lawyering. It required thinking
16 outside the box in significant ways. I think Mr. Cosenza
17 has mentioned a number of times, and I agree, that this is a
18 highly unusual 9019 settlement and that's a testament to the
19 creativeness of the trustees and their counsel in coming up
20 with something that addresses the needs and concerns of all
21 the parties, which were quite divergent.

22 So any way, I'll let you continue.

23 MR. KRAUT: Thank you. We appreciate the kind
24 remarks, Your Honor.

25 Since Your Honor is obviously familiar with the

1 papers we submitted I won't belabor this, but I think it's
2 worth spending just a few moments highlighting why we
3 believe the trustee relief is -- should be included in the
4 order.

5 THE COURT: Sure.

6 MR. KRAUT: This is not the first time a court has
7 been asked to issue findings concerning an RMBS trustee's
8 evaluation of a settlement, it's not even one of the first
9 times.

10 As the first department recognized years -- a few
11 years ago in a case that's become known as Countrywide, and
12 this is a quote:

13 "The ultimate issue for determination is
14 whether the trustee's discretionary power was
15 exercised reasonably and in good faith. It is not
16 the task of the Court to decide whether we agree
17 with the trustee's judgment, rather our task and
18 limited to ensuring that the trustee has not acted
19 in bad faith such that his conduct constituted an
20 abuse of discretion."

21 So it's clear the Court is not expected to
22 substitute its own judgment for that of the trustee's, the
23 question really comes down to reasonableness and good faith.
24 And when courts have considered whether trustees have acted
25 reasonably and in good faith in considering RMBS settlements

1 courts have looked at a few elements of the trustee's
2 process, and I'm going to focus on what I think are the four
3 major ones.

4 One, have they provided notice to investors,
5 offered them a chance to weigh in and consider their views?

6 Number 2, have the trustees retained experienced
7 counsel to assist with their evaluation?

8 Number 3, have the trustees retained experts in
9 their area of core competency to advice on appropriate
10 issues and have they followed the advice they received from
11 their experts?

12 And four, did they identify suitable personnel
13 within their organizations to decide whether to accept the
14 settlement on a trust by trust basis?

15 And Your Honor, in each instance in which trustees
16 have taken those steps courts have found that they acted
17 reasonably and in good faith, and that's exactly what
18 happened here. And the seven affidavits and declaration
19 walk through those steps, and I'm just going to touch
20 briefly on each of the four.

21 First the trustees provided substantial notice to
22 investors. As Mr. Cosenza explained the trustees received
23 the settlement agreement in its modified form on the -- I
24 don't know if he said it this way -- but it's the same point
25 -- in the evening of March 17, it was a Friday, I remember,

1 after the close of business and then the next business day
2 we put a notice out to investors. That notice let them know
3 about the settlement agreement, that we had retained Judge
4 Fitzgerald, that we welcomed their comments and actually
5 wanted them before May 5th, almost a -- on May 5th, almost a
6 month before we would have to decide so that they could be
7 considered. The trustee sent multiple notices. Not just
8 that one, there was one in April, which was specifically
9 responding to inquiries we had received from investors, so
10 we knew that the notices were working, we were hearing from
11 investors.

12 And so the notices provided information, responded
13 to questions and requests, and alerted investors to
14 important dates and deadlines coming up in the course of
15 milestones that were leading up to today.

16 Happy to walk through any of those notices if you
17 have questions, but I know they're attached to the
18 declarations.

19 And the trustees also set up a website to post
20 information and documents for investors to review, which
21 also led to questions. And again, so we knew that this was
22 working.

23 Investors shared their views of the settlement
24 agreement with the trustees in write, the trustees and their
25 experts carefully reviewed them. So we believe the notice

1 element is certainly satisfied.

2 Two, the trustees worked with experienced counsel
3 that brought different experience to the table. The
4 different trustee counsel you see before you have some
5 bankruptcy experience, some others have experience in
6 resolving repurchased claims, and others generally advice
7 trustees and deal with issues and have experience in
8 resolving settlements of this nature. And so again, all
9 this is set forth in the client affidavits and declaration.

10 Number 3, experts. Besides the financial experts,
11 Duff & Phelps that I mentioned before, the trustees decided
12 to retain a bankruptcy litigation expert to advice them
13 about the settlement and also other alternatives to the
14 settlement if the settlement was not accepted.

15 After considering a number of options the trustees
16 decided to retain Judge Fitzgerald. Her credentials are
17 impeccable, her experience is highly relevant for today. I
18 could go on and talk about her credentials but not within
19 the time that I'm allotted for today, and so you'll just
20 have to read that in the report.

21 Judge Fitzgerald established a methodology for
22 analyzing whether the settlement was reasonable. She
23 reviewed many documents, participated in numerous calls and
24 meetings with the trustees, their counsel, and the trustee's
25 financial experts, and as her report explains she carefully

1 considered all views of investors who offered any views.

2 Finally Judge Fitzgerald wrote and delivered to
3 the trustees a report in which she concluded to a reasonable
4 degree of professional certainty the RMBS settlement sets
5 forth a reasonable methodology to liquidate the disputed
6 RMBS claims and entry into the RMBS settlement and the
7 circumstances of the bankruptcy proceeding would be
8 appropriate for the accepting trusts.

9 Finally the trustees appointed qualified trustee
10 personnel to evaluate the settlement. The trustees selected
11 senior trust officers to make is ultimate decision whether
12 to accept it or reject it as to any given trust, and also
13 identified qualified employees to manage and coordinate the
14 process for receipt of the offer up through the settlement.

15 The trustees spoke regularly with their counsel,
16 had opportunities to ask questions of Judge Fitzgerald,
17 communicated with any investors who reached out, reviewed
18 the correspondence that investors sent in writing, and of
19 course spent time reading Judge Fitzgerald's report quite
20 carefully.

21 As you know ultimately the trustees agreed with
22 Judge Fitzgerald's recommendation to accept the settlement
23 for 238 trusts and to reject as to others. And as
24 Mr. Cosenza noted, that number has changes -- has changed
25 and may change slightly over time, but in terms of the

1 decision the trustees made we accept it as to 238 trusts.

2 In closing, Your Honor, I just want to touch
3 briefly on why we believe the narrowly tailored bar order
4 would be appropriate in this case.

5 Under the governing agreements under which the
6 trustees operate we're not expected to risk our own funds.
7 The purpose of the findings, the whole process leading up to
8 today, other than the 9019 specific and the robust notice
9 program, was to tell investors that if you have a problem
10 with how the trustees are going about this come to court --
11 file your submission on June 22nd and come to court.

12 From the time we gave the first notice of March
13 20th to today is over three months. It's plenty of time.
14 And June 22nd, which was the deadline for submitting
15 objections, was actually their second chance. As I
16 mentioned we asked for comments by May 5th.

17 Investors also had the opportunity under the
18 settlement agreement to try to offer directions to the
19 trustee to terminate the settlement as to any trust. And so
20 really there have been three opportunities for investors to
21 have their views heard.

22 Again, as Mr. Cosenza said, the few objections
23 that were raised have been satisfied. And so to be clear no
24 one objects to a bar order, and the only parties here
25 support it.

1 So we think it wouldn't be fair for investors to
2 not contact us when we solicited views, not object and then
3 sue later, and the bar order protects against that kind of
4 unfair surprise.

5 As the institutional investors made clear in their
6 submission last Thursday the bar order is important not just
7 for trustees but for investor protection too, because if the
8 trustees were sued for accepting the settlement then the
9 trustees have a right to be indemnified by trust funds.

10 And just finally, Your Honor, we think that the
11 bar order is consistent with what courts have done in each
12 of these multi-trust settlements that followed Countrywide,
13 and it's also consistent with prior orders by the Court in
14 this proceeding.

15 THE COURT: I think the record entirely supports
16 the bar order that you sought, and as you indicated, there
17 were several levels of notice and due process. Concerns
18 have surely been satisfied given everything that's been
19 done.

20 MR. KRAUT: So unless Your Honor has questions for
21 us we'll complete our presentation.

22 THE COURT: All right. Anyone else wish to be
23 heard?

24 MR. MUNNO: Your Honor, just a moment for the
25 record.

1 THE COURT: Yes.

2 MR. MADDEN: I just want to put on the record the
3 institutional investors support the settlement.

4 THE COURT: Please.

5 MR. MADDEN: I'm Robert Madden of Gibbs & Bruns, I
6 represent the institutional investors, they're 14 large
7 holders of the certificates that are -- were the underlying
8 economic stakeholders, not for all of it but a very big part
9 of it. My clients hold six and a half billion dollars in
10 securities and 196 of the trust that are at issue here.

11 We support the 9019 motion. We support the
12 settlement agreement. We support the trustee findings. And
13 we support the bar order.

14 We think that the settlement agreement provides
15 for a fair, equitable, efficient, and expeditious resolution
16 of these claims, and we ask the Court to enter the proposed
17 order as was submitted.

18 Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Well that is very significant in terms of the case
21 generally and specifically in terms of satisfaction and
22 analysis of the fourth Iridium factor which requires me to
23 consider the level of support for the settlement. So the
24 fact that the parties with the economic -- true economic
25 stake in the amount of \$6 billion have stood up and

1 supported the settlement and appeared to have actively
2 participated in causing this to come together is a
3 significant factor and goes a long way to lend support for
4 the reasonableness of the settlement. So I appreciate that.

5 All right. Does anyone else wish to be heard?

6 All right.

7 MR. MADDEN: That's all from us, Your Honor.

8 THE COURT: Very good.

9 So ordinarily what I would do is read a decision
10 into the record. Because of the late breaking nature of a
11 lot of -- of the submissions I'm not going to be able to do
12 that today.

13 That notwithstanding happily the proposed order
14 that was sent to me says exactly what I would have said as
15 it goes through each of the Iridium factors, which is what a
16 bench decision covering the disposition of this motion would
17 look like as it's incumbent upon me to consider the evidence
18 that's been offered and to marshal and it to go through each
19 of the Iridium factors. And the proposed order does that I
20 think in a perfectly acceptable way. And it's bolstered at
21 every turn, as I mentioned before, by Judge Fitzgerald's
22 expert opinion report.

23 So the record I think is very robust with all the
24 reasons why it's not even close that the settlement
25 satisfies the Iridium factors and falls well above the

1 lowest point in the range of reasonableness.

2 I would like to discuss and I think I'll discuss
3 it with you, Mr. Cosenza, or all of you, some minor changes
4 that I'd like to make to the order, which I have had an
5 opportunity to read over night.

6 MR. COSENZA: Sure.

7 THE COURT: And I can just --

8 MR. COSENZA: Absolutely.

9 THE COURT: -- give them to you and see if they're
10 okay with you, and I think that's just the most expeditious
11 way to do it.

12 So procedurally. I want to talk about
13 procedurally, because what we're doing with respect to the
14 findings is a little unusual and I want to make sure that we
15 get it right in terms of the mechanics. All right?

16 So the mechanics here in this court after there
17 would be the entry of proposed findings of fact and
18 conclusions of law is the issuance of a notice, right, that
19 starts the time period running.

20 MR. COSENZA: Okay.

21 THE COURT: Okay? So you're all -- I just -- I
22 never know how much counsel are familiar with how this
23 actually works. So --

24 MR. COSENZA: You won't offend me by over
25 explaining.

1 THE COURT: Okay. So what happens is that there
2 will be an order that gets issued indicating that proposed
3 findings of fact and conclusions of law have been filed, and
4 an essence of proceeding begins at the district court and
5 there's a time period in which parties can object, and after
6 that time period lapses then the order, presumably, would be
7 considered and would be -- the findings would be considered
8 and would be entered by the district court.

9 The slight wrinkle here is that this is a core
10 proceeding. I unquestionably have the authority to enter an
11 order approving the RMBS settlement.

12 MR. COSENZA: That's right.

13 THE COURT: The order by its term is effective
14 upon entry. That notwithstanding we still need to have the
15 findings entered by the district court.

16 So what I've been told is that once I enter my
17 order and that proceeding starts the parties can send a
18 letter to the district court explaining what it is that
19 you're doing.

20 MR. COSENZA: Uh-huh.

21 THE COURT: Even though it's set forth in the
22 order, let's just say it won't necessarily be obvious to the
23 district court judge who's lucky enough to draw this, what
24 exactly it is that he or she is doing.

25 For that reason and because I do not want to

1 create any impression that the bankruptcy court doesn't have
2 authority to enter a 9019 settlement, what I would like to
3 do is call this document order approving RMBS settlement
4 agreement and including certain proposed findings of fact
5 and conclusions of law. Does that sit all right with all of
6 you?

7 MR. COSENZA: That makes sense, Your Honor.

8 MR. KRAUT: Yes, Your Honor.

9 THE COURT: All right? Okay. So that was point
10 number 1.

11 I had a concern that it be clear that the entirety
12 of the litigation that we had around what led to the
13 protocol and in connection with the estimation motion very
14 much be part of the record here. I think it comes in in a
15 number of ways. It's been cited to and discussed by at
16 least two of the declarants, Judge Fitzgerald speaks about
17 it, I think Mr. Trump speaks about it, and possibly others,
18 and I know it's been discussed at length in the briefs. So
19 I'm satisfied that it's part of the record. Just think
20 about that for a couple of minutes and if you believe that
21 more specific citations ought to be added you can add them.
22 I believe that they're incorporated by reference -- by the
23 references to the paragraphs in the various affidavits. So
24 I'm okay, I'm just sharing my thought process with you.

25 I'm going to give you some real nits, ready?

1 MR. COSENZA: Sure.

2 MR. KRAUT: Sure.

3 THE COURT: Okay. And I am trying to see if I'm
4 looking -- I'm looking at a clean, not the blackline. At
5 the very bottom of the first page of the clean there's an
6 extra space before "the BNC", and if you turn the page at
7 the top there's an extra space after the parenthetical that
8 includes docket number 55609.

9 MR. KRAUT: I wonder if those are because of the
10 full left and right justifying.

11 THE COURT: Yeah, maybe it's because the printing.

12 On page 3 -- or page 7 of 32 you say "and the RMBS
13 settlement agreement requiring that this Court submit the
14 trustee findings." I'd like you to change that word to
15 requesting. Okay?

16 I'll spare you over what I consider to be purely
17 typo type corrections. We'll take care of those for you.

18 On page 7 at the -- about 6 lines up from the
19 bottom of numbered paragraph 6 there's part of sentence
20 which reads "which will conclude the LBHI debtor's cases
21 significantly sooner." I think you should add the word
22 "help," which will help conclude. You with me?

23 MR. KRAUT: Yeah.

24 THE COURT: And then several lines after that you
25 mention taxing the Court. Please take that out. I get paid

1 to be taxed. But let's say which would be expensive, time
2 consuming, and would delay recoveries for other creditors.

3 At the end of paragraph 10 we're going to add a
4 sentence that reads, "The Court finds the releases contained
5 in the RMBS settlement agreement to be appropriate."

6 Similarly at the end of paragraph 12 we're going
7 to add a sentence that says, "That the record is devoid of
8 any evidence that the settlement was not reduced by arms
9 length negotiations."

10 In paragraph E -- in decretal paragraph E, this is
11 a question for you. I don't know that I have the authority
12 under Section 105 or otherwise to find or order that the
13 accepting trustees are authorized to do anything.

14 MR. KRAUT: This was in the version we saw, we saw
15 no reason to strike it, but admittedly I don't know that it
16 adds anything. I'm happy to have it drop out, Your Honor.

17 THE COURT: I just don't think that I can say
18 that. So do we want to make that -- I don't know what to do
19 with this. If you want it it's not something that I can
20 really --

21 MR. COSENZA: Let's just delete it. Let's make it
22 simple, Your Honor, and just take that out.

23 THE COURT: All right. And then -- and this is a
24 real fine point, but decretal paragraph M as in Mary by its
25 terms this says that the Court retains exclusive

1 jurisdiction, court otherwise retains jurisdiction. I think
2 we need to at least mention in passing other than with
3 respect to the entry of the findings.

4 MR. KRAUT: Fair enough, Your Honor, that's a good
5 point.

6 THE COURT: Right? It's just --

7 MR. KRAUT: Yes, absolutely.

8 THE COURT: You know, just let's make them
9 connect --

10 MR. KRAUT: Yes.

11 THE COURT: -- up to each other, otherwise on its
12 face it looks like that I'm saying that the district court
13 can't do what we know the district court needs to do.

14 MR. KRAUT: No objection to that, Your Honor.

15 THE COURT: Okay? So is it conclusion overall is
16 that the settlement agreement is in the best interest of the
17 LBHI debtors and the creditors. It establishes a thoughtful
18 and robust process for estimating the RMBS claims for the
19 purpose of allowance, and it minimizes the risks, the
20 tremendous costs, and delays that would be associated with
21 the litigation that otherwise would ensue were the
22 settlement not approved.

23 I think the record abundantly supports the
24 conclusion that the trustees have acted reasonably and in
25 good faith and in every respect are entitled to the trustee

1 findings that they seek and that will be part of what
2 enables this process to move forward.

3 Anything else?

4 MR. KRAUT: No, Your Honor.

5 MR. COSENZA: No. Thank you, Your Honor.

6 THE COURT: All right. Well again let me express
7 my appreciation for all the hard work that went into this.
8 We will be seeing a lot of each other.

9 MR. KRAUT: Yes.

10 THE COURT: I think once we get further into the
11 summer and into the late summer if you would contact
12 chambers about getting together to talk on a pretrial basis,
13 hopefully not about disputes, but just about mechanics and
14 processes for streamlining the trial.

15 We have I think about four weeks reserved for you
16 on the calendar and hopefully we'll be able to get it --
17 everything done within that allotted time, and we can take
18 care of a lot of things I think by talking about -- talking
19 them through before we get started. So --

20 MR. MUNNO: We're definitely starting on the 16th?
21 October 16th?

22 THE COURT: You are definitely starting on the
23 16th, although in the interest of full disclosure I must
24 tell you that before we put that date on the calendar I had
25 committed to do an ABI conference in Washington on the 17th.

1 Mr. Cantor is looking at me with tremendous consternation.
2 My panel is first thing in the morning. I will immediately
3 get back on the train and we can have a session in the
4 afternoon that day.

5 MR. MUNNO: Thank you.

6 MR. COSENZA: Okay. Thank you, Your Honor.

7 THE COURT: All right? Thank you all very much,
8 and again, well done.

9 MR. COSENZA: Thank you.

10 THE COURT: Thank you.

11 (Whereupon these proceedings were concluded at 10:07

12 AM)

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I N D E X

E X H I B I T S

PARTY	NO	DESCRIPTION	EVID.
Debtor	1	Zachary Trump Declaration	9
	2	Paul Shalhoub Declaration	9

I N D E X

RULINGS

PAGE

Doc #55232 Motion of Lehman Brothers Holdings Inc.
for Entry of Order (A) Approving RMBS Settlement
Agreement, (B) Making Certain Required Findings
Regarding Decision of RMBS Trustees and LBHI Debtors
to Enter into RMBS Settlement Agreement, (C)
Scheduling Estimation Proceeding to Determine RMBS
Claims and Approving Related Procedures Regarding
Conduct of Hearing, and (D) Granting Related Relief
(related document(s) 55154, 55096) 53-59

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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AAERT Certified Electronic Transcriber CET**D-408

Date: July 10, 2017

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